

WP(C) 582/2003

BEFORE

THE HON'BLE MR JUSTICE HRISHIKESH ROY

1. WP(C) NO. 582/2003

M/S Pancharatna Finance Ltd & & Petitioner

Vs-

Union of India & & Respondents

For the Petitioner : Mr. B K Bhattacharjee,
Mr. D J Barman.

For the Respondents : Mr N Bora, CGSC,
Mr A K Phukan,
Mr M Bhuyan,
Mr H Das,
Mr P Hazarika,
Mr S K Talukdar.

2. WP(C) NO. 256/2003

M/S Pancharatna Finance Ltd & & Petitioner

Vs-

Union of India & & Respondents

For the Petitioner : Mr. B K Bhattacharyya,
Mr. D J Barman,
Mr R Sarma,
Mr J P Gogoi.

For the Respondents : Mr N Bora, CGSC,
Mr G P Bhowmik,
Mr H Mahanta.

Date of Hearing : 13.06.2007

Date of Judgment : 13.06.2007

JUDGMENT AND ORDER (ORAL)

Heard Mr B K Bhattacharyya, learned counsel for the petitioner.
Also heard Mr M Bhuyan, learned counsel appearing for respondent Nos 2,3 & 4 and
Mr N Bora, learned counsel appearing on behalf of The Union of India.

2. The petitioner is a Company registered on 27.6.1985 under the Companies Act, 1956 and carries on, inter alia, the business of finance and investment and has established itself as a Residuary Non-Banking Company under the Res

erve Bank of India Act, 1934, (for short, 'the Act') herein referred to as the Act.

The grievance of the petitioner raised in first writ petition relate to the process of scrutiny of the application for a certificate of registration made by the petitioner Company before the Reserve Bank of India (for short, 'the RBI') under the provisions of Section 45-IA of the Act.

The petitioner Company, by filing the second WP(C) 582/2003 has challenged the order dated 1.1.2003 passed by the RBI, whereby it has been held that the petitioner/Company is not entitled for a certificate of registration to carry on the business of a Non-Banking Financial Company (for short, 'NBFC'), as contemplated under Section 45 IA of the Act.

3. Mr Bhattacharyya, learned counsel appearing for the petitioner, contends that although the petitioner/Company fulfills the norms laid down by the Act for obtaining the certificate as a Non-Banking Financial Company, the Reserve Bank of India has not dealt with their application in a fair manner but has instead rejected the application for extraneous and irrelevant consideration.

It is further contended that the show cause notice dated 25.11.2002 of the Reserve Bank of India, requiring the petitioner to give reply within 10 (ten) days, was actually received after the stipulated 10 (ten) days was already over, and it has been cited as a ground of unfair consideration of the application made by the petitioner/ Company.

4. Mr M Bhuyan, learned counsel appearing for the respondent/Reserve Bank of India on the other hand, argues that after the amendment of Act 23 of 1993, Section 45 IA in the Act was incorporated which, for the first time required a Non-Banking Financial Company to obtain a certificate of registration from the Reserve Bank of India. The conditions required to be fulfilled by the Non-Banking Financial Company before such certificates are issued, have been stipulated under Sub-Section 4 of 45 IA of the Act.

It is contended by the learned counsel appearing for the RBI that the petitioner/Company applied for a certificate on 4.7.1997 and since the petitioner/Company could not fulfill the conditions laid down under the Act, the Reserve Bank of India took the decision to reject the application made by the petitioner/Company, by its order dated 1.1.2003.

It is further contended that the Reserve Bank of India is the competent and expert authority to take a decision in the matter and since the petitioner/Company could not fulfill the conditions laid down under the Act, despite several opportunities given to it, the impugned order dated 1.1.2003 has been rightly passed by the Reserve Bank of India.

Mr Bhuyan has also drawn attention to the postal receipts pertaining to the show cause notice dated 25.11.2002 and submits that the said show cause notice was posted for delivery on 27.11.2002 and was also received by the petitioner/Company on 3.12.2002 as has been acknowledged in their letter dated 12.12.2002 and accordingly, the grievance made of non-receipt of adequate time for responding to the show cause notice, is totally unfounded.

5. It is also submitted on behalf of the respondent/Reserve Bank of India that under Section 45-IA (7) of the Act, an Appeal can be preferred to the Central Government against an order of rejection of application or cancellation of certificate of registration, within a period of thirty days and since the petitioners had an alternative remedy, the present petitions are not maintainable.

6. The decision reported in 1992 2 SCC 343 Peerless General Finance and Investment Co.Limited and Another Vs- Reserve Bank of India has been cited on behalf of the respondent to demonstrate the position of the Reserve Bank of India. The Supreme Court in Para 30 of the Judgment has indicated that the Reserve Bank of India is a creature of statute and it has large contingent of expert advice relating to matters affecting the economy of the entire country and the bonafides of the Reserve Bank of India in playing a vital role in the economy and financial affairs of India as well as its role in safeguarding the economy and financial stability cannot be undermined.

It is further held by the Supreme Court that it is not the function of the Courts to sit in Judgment over matters of economic policy, which must necessarily be left to expert bodies. The Courts cannot be expected to decide them without having the aid of experts.

7. By relying upon the decision in Peerless General Finance (Supra) Mr Bhuyan contends that the Reserve Bank of India has a role to protect the interest of the depositors in Companies, such as the petitioner Company and since the petitioner/Company is unable to fulfill the requirement of the provisions of Sub-Section 4 45-IA of the Act, the Reserve Bank of India had to order rejection of application of the Company for the certificate of registration.

8. I have taken note of the voluminous correspondences between the petitioner/Company and the Reserve Bank of India and from the said correspondences, it appears that before the impugned rejection order was passed, adequate opportunities were afforded to the petitioner/Company to rectify the deficiencies which were noticed by the Reserve Bank of India. Show cause notices, including the show cause notices dated 1.1.1998 and 25.11.2002 were sent to the petitioner/Company by the Reserve Bank of India and the response received from the petitioner/Company have also been duly considered by the Reserve Bank of India.

In the rejection order dated 1.1.2003, responses given by the petitioner/Company were taken note of and the responses of the petitioner were found to be unsatisfactory by the Reserve Bank of India by recording the following reasons:

- i) The Company admitted to the violation of credit concentration norms.
- ii) Unsound investment policies of the Company resulted in erosion of the investments. This reflects the Company's poor management strategy of the investment portfolio.
- iii) The company explained that the losses incurred were due to provisions made for the depreciation on investments made. However, the Company, in its explanation, had not given any convincing and concrete proposal to improve its profitability.
- iv) The Company replied that the frequent overdrafts were due to non-receipt of fresh deposits during 2001-2002, resulting in liquidity crisis. The Company's explanation is not convincing and reflects on poor funds management by the Company.

From the above reasons indicated for rejection of the application for registration, it appears that relevant considerations were made by the Reserve Bank of India while considering the application of the petitioner/Company. Because of failure of the petitioner Company to comply with the statutory provisions laid down under the Act and the direction issued thereunder, the Bank was not satisfied that the conditions contained under Sub-Section (4) of Section 45-IA of the Act have been fulfilled by the petitioner/Company. On such conclusion, the application for certificate of registration to carry on the business of Non-

Banking Financial Company was rejected by the respondents/Reserve Bank of India.

9. In view of the above, no infirmities are seen in the decision making process of the Reserve Bank of India and accordingly I am not inclined to entertain the writ petitions filed by the petitioner/Company.

Another ground for not accepting the writ petitions is the availability of alternative remedy by way of an Appeal, which may be filed under Section 45-IA (7) of the Act.

Although the prescribed time for filing an Appeal to the Central Government has already expired as such an Appeal should have been filed within 30 days from the date of communication of the rejection order dated 1.1.2003, considering the fact that the petitioner/Company had approached this Court at the stage of receipt of the show cause notice dated 25.11.2002 and also considering the fact that the writ petition challenging the rejection order has been pending in this Court, I am of the view that the ends of justice would be met by permitting the writ petitioner to file an Appeal, if so advised, under the provisions of Section 45-IA (7) of the Act. If such an Appeal is filed, instead of disposing of the Appeal on the ground of limitation, the Appeal decided on merit, without in any manner being influenced by the discussions made in this order.

10. In view of the above discussions, the writ petitions are not accepted and the same are accordingly, dismissed.

JUDGE
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